

IV. CHANNEL AND TIER PLACEMENT RULES MUST BE MODIFIED TO ENSURE THAT LEASED ACCESS IS A "GENUINE OUTLET"

A. Channel Placement

The legislative history of the 1992 amendments to the leased access provisions indicates that Congress "intended to provide programmers with a 'genuine outlet' for their programming."³⁹ In this respect, while the FNPRM addresses questions of tier placement,⁴⁰ it does not address the related question of channel placement. Even though a cable operator might designate a channel on the BST or a widely received CPST, the channel operator might still designate a channel that is so remote from the majority of channels in the tier that the leased access programmer is paying for less than a "genuine outlet."

The experience of Telemiami, a Florida-based leased access programmer, is instructive in this regard. Telemiami stated, in a letter to the Commission, that a cable operator tried to move Telemiami "from placements on channels 40 and 43 . . . to channels 95 and 96 (placements 36 channels away from the last programmed channel)."⁴¹ GSN is wholly sympathetic to Telemiami's plight. Leased access

³⁹ FNPRM at ¶ 118; see S. Rep. No. 92, 102d Cong., 1st Sess. 79 (1992) ("1992 Senate Report").

⁴⁰ See FNPRM at ¶¶ 116-20.

⁴¹ Telemiami Letter at 7-8.

programmers do not have the leverage to avoid being placed on the most unfavorable channels in a given tier.

Accordingly, GSN urges the Commission to adopt a rule that would continue to allow cable operators to designate any channels they wished to designate for leased access, but that would also allow a leased access programmer to choose from among those available channels on a first-come, first-served basis. As discussed below in Section V, GSN urges that the operator hold open all designated channels for a period of one week after the effective date of the Commission's rules or such time as a channel is available. Thus, any such election would be made, in order of priority, after the one-week period, at such time as the operator and programmer execute a leased access agreement. This rule would allow cable operators the freedom to designate what channels would carry leased access programming. It would, however, redress the serious imbalance of negotiating power suffered by leased access programmers by allowing a programmer to choose from whatever channels are available at the time the leased access agreement is concluded.

Perhaps most importantly, this rule would bring the Commission's rules closer to the overriding Congressional goal of leased access: "divorcing cable operator editorial control over a limited number of channels."⁴² By leaving channel placement to the parties, the Commission would also allow a cable operator to relegate a leased

⁴² H.R. Rep. No. 934, 98th Cong., 2d Sess. 50 (1984).

access programmer to the most remote channels on a tier. Thus, a cable operator can assert a measure of editorial control. This type of editorial control over the placement of programming runs contrary to the wishes of Congress and undermines the entire rationale underlying leased access.

GSN thus urges adoption of the above rule not only to redress the imbalance between operators and programmers with regard to channel placement, but also because the rule would prevent exercise of editorial control in a manner contrary to the intent of the leased access provisions of the Communications Act.

B. Tier Placement

GSN agrees with the Commission's tentative conclusion that the BST and the CPST with the highest subscriber penetration qualify as genuine outlets. The Commission has, however, asked for comments "on whether a CPST that does not boast the highest subscriber penetration could qualify as a genuine outlet, and under what circumstances."⁴³ Equating a "genuine outlet" for leased access programmers with channel locations "most subscribers actually use," the Commission has, as an example, also asked whether "most subscribers" means more than 50 percent of subscribers.⁴⁴

⁴³ FNPRM at ¶ 119.

⁴⁴ Id.

For the sake of clarity, the Commission should only consider the CPST with the highest subscriber penetration to be a "genuine outlet" for the purpose of the leased access provisions. Considering any other type of tier, including tiers that might have more than 50 percent subscriber penetration, assumes that cable channels tiers remain static for any significant period of time. This assumption does not reflect actual practice. Cable operators have significant freedom to re-tier channels as they wish. Reprogramming of tiers, for whatever reason, can drastically reduce the subscribership of a given cable programming tier. Thus, channel locations that "most subscribers actually use" can only be those locations that are likely to remain so for the length of a leased access agreement. The only CPST on which the leased access programmer would have a measure of protection from adverse reprogramming would be the CPST with the highest level of subscriber penetration -- this tier would be far more likely to remain stable over a long period of time, as cable operators are unlikely to alter a programming mix proven to have the widest appeal. Thus, it would be the only tier that "most subscribers actually use."

By requiring cable operators to place leased access channels on either the BST or the CPST with the highest level of subscriber penetration, the Commission would effectively prevent unfavorable re-tiering. Given the reality of cable re-tiering, a clear rule would be the only way for the Commission's rules to meet the high standard set by

Congress when it stated that "it is vital that the FCC use its authority to ensure that these channels are a genuine outlet for programmers."⁴⁵

Moreover, even if re-tiering were not an issue, by placing leased access programmers on the BST or the CPST with the highest subscriber penetration instead of tiers with more than 50 percent of subscribers that do not have the highest subscriber penetration, the Commission has an opportunity to give leased access programmers a mild "jump-start." The added benefit of being carried on the BST or the CPST with the highest subscriber penetration rate will not make up for nearly four years of lost opportunities owing to the failure of the implicit fee formula, but it is at least a step in the right direction.

V. PROGRAMMER SELECTION SHOULD REFLECT THE LIKELIHOOD OF HIGH DEMAND FOR LEASED ACCESS CHANNELS

The Commission tentatively concluded that operators should use a "first-come, first-served" system to allocate designated channels until such time as the operator's leased channel capacity is exhausted, and asked for comment as to what system should be used when demand does exceed capacity.⁴⁶ Although a first-come, first-served system, in general, provides the fairest way of allocating available channel capacity, the Commission must address two points: first, what does "first-come, first-

⁴⁵ 1992 Senate Report at 79.

⁴⁶ FNPRM at ¶ 128.

served" mean and, second, what system should be used to set appropriate rates in markets where demand for leased access channels exceeds the capacity of the operator.

First, the Commission must clarify what "first-come, first-served" means. Without guidance from the Commission, disputes are likely to arise in the future over whether notification of intent, submission of a term sheet, actual execution of a leased access agreement or some other event is sufficient to establish priority. The likelihood of such disputes is particularly acute if there is a high demand for leased access channels and programmers are ready to stake their claims the day the Commission's rules come into effect. GSN suggests that the Commission base the priority of applications for designated channels on the order in which the cable operator receives written requests from programmers for designated channels.⁴⁷ While such a bright-line rule is not completely free from hypothetical problems, it presents far fewer problems than the alternative of basing priority on the order in which actual agreements are executed. GSN's proposed rule allows all leased access programmers to compete on an effectively level playing field by removing the pressure leased access programmers may feel to conclude agreements quickly in order to assure access to a designated channel.

Second, the Commission's first-come, first-served proposal does not adequately provide for the situation where demand for leased access channels exceeds

⁴⁷ The proposed rule assumes an actual request for a designated channel. This process should be distinguished from the process by which a cable programmer can request, and receive within seven days, a schedule of the cable operator's leased access rates and other information pertaining to leased access. See id. at ¶ 40.

available capacity. It assumes that cable operators will be able to fill their designated channels gradually, over a period of weeks or months, and that the problem of insufficient capacity to meet demand can be dealt with as a separate issue from immediate allocation. This, however, is unlikely to be the case in most markets. Almost 100, and by some counts 150, new or proposed cable networks are currently looking for open channels on cable systems.⁴⁸ If the Commission's revised cost formula brings leased access rates to a level sufficient to allow this huge group of programmers effective access to designated channels, GSN believes that the cable television industry may experience the modern-day equivalent of the Oklahoma land rush. Programmer selection will then be a question not so much of throwing out a carrot of attractive rates but of beating leased access programmers away with a stick.

The Commission's proposal, however, has not yet been refined to take the potentially vast demand for leased access into account, to the ultimate detriment of cable operator revenue. Under the scheme as proposed by the Commission, for example, a cable operator might find eight different programmers requesting access to its six channels on the first day. Until the operator has allocated its entire set-aside, the Commission's proposal arguably could be interpreted to require each leased access contract to be priced using the Commission's cost formula *when actual demand in the given market would have justified using market rate pricing*. This result would come

⁴⁸ See Richard Mahler, "Struggling to Hook Up With Viewers," Los Angeles Times F1 (April 29, 1996); Michael Katz, "New Networks Fight for Space," Broadcasting & Cable 61 (April 29, 1996); "New Networks" at 3.

straight out of the cable operator's bottom line, as it is virtually inevitable that negotiated rates would exceed the rate obtained under the Commission's cost formula.

GSN thus strongly urges the Commission to adopt the following allocation method in order to avoid the above result. First-come, first-served would be retained, but demand in the market would be measured by allowing prospective leased access programmers to deliver written requests for leased access channels to cable operators during the first week (*i.e.*, five business days) after the effective date of the Commission's revised leased access rules and, thereafter, within the first week after new leased access channels are available.⁴⁹ Such written requests would prioritize the leased access programmer's choices of specific leased access channels.⁵⁰ If, at the conclusion of the first week, the cable operator has not received requests for all of its quota of leased access channels, it may proceed to execute contracts with those programmers who have requested channels on the basis of the Commission's new cost formula. If, however, demand exceeds supply, all programmers who have requested a designated channel by the end of the week may competitively bid in successive rounds of auctions conducted by the operator to determine the appropriate price for designated channels. Similar to the

⁴⁹ Cable operators would be required to give public notice of when a new leased access channel would become available at least 60 days prior to the date on which such channel would become available. GSN suggests that such public notice could be given by requiring cable operators to publish such notice at least twice in a newspaper of national circulation and in an appropriate cable industry trade publication.

⁵⁰ It is possible that some leased access programmers might be interested only in lower-numbered channels. If so, their notice to the cable operator should specify this preference.

Commission's PCS spectrum auctions, the operator would notify participating leased access programmers of the number of bidders, the identity of the bidders and high bids after each round of bidding and then initiate a new round until no higher bids are received. Once successive rounds of bidding have eliminated excess programmers, designated channels can be allocated among those programmers remaining based on the preferences specified in their respective bid notices and the amounts of their bids (*i.e.*, as between two "winning" bidders who desire the same channel, the higher bidder will receive that channel and the lower bidder will be awarded its second choice).

Subsequent negotiation for leased access contracts would then be left to the cable operators and the programmers, although the Commission should ensure that the process functions expeditiously and fairly. Winning bidders still would have to enter into leased access agreements with the cable operator, but cable operators would be required to enter into these agreements in good faith so that the non-pricing terms of such agreements could not be used to keep leased access programmers from launching their programming on a timely basis. Additionally, the Commission should provide for strict time limits governing both auctions and the execution of leased access agreements so that leased access programmers have some assurance that the entire process of gaining access will not take more than a few months. Moreover, the Commission should provide for mandatory and expedited arbitration to resolve disputes between leased access programmers and cable operators that arise out of the auction or subsequent agreement execution processes.

GSN recognizes that the foregoing suggests only a skeletal framework for auction and contract execution matters. Although the Commission will have to embellish this framework based on the other components of its final leased access rules, the fundamental structure described above should provide a practical mechanism for allocating leased access channels when demand exceeds supply. Also, the above auction mechanism is not only consistent with other Commission plans for the allocation of scarce telecommunications resources, but it is a simple, content-neutral solution to the rather difficult problem of fairly allocating designated channels when demand outstrips supply. Moreover, by providing for a period to measure demand, it also acknowledges the likelihood that demand for designated channels may very well outstrip available capacity.

VI. TREATMENT OF NOT-FOR-PROFIT PROGRAMMERS

The Commission has raised two issues with respect to not-for-profit leased access programmers: (1) whether not-for-profits should receive preferential leased access rates and (2) whether not-for-profits should have a separate set-aside requirement. GSN strongly opposes the adoption of either type of preferential treatment.

A. Preferential Leased Access Rates

There has been no persuasive showing before the Commission that mandating preferential leased access rates for not-for-profits is justified or consistent with the Commission's obligations to establish the maximum leased access rate. Although it has been argued that the current rate for leased access under the highest implicit fee calculation makes it impossible for even the largest not-for-profits to afford leased access,⁵¹ this argument alone does not justify a preferential leased access rate for such programmers. As many programmers have discovered, current leased access rates are prohibitively high even for relatively well financed advertising-supported leased access programmers. A specific example cited by the Petition for Reconsideration filed by the Council for Media Education ("CME") illustrates this problem with crystal clarity. CME estimates that it would cost even the largest not-for-profits over \$400 million a year to lease a channel on a national basis, and reasons from that estimate that not-for-profits deserve preferential rates.⁵² GSN is hard pressed to find an example of *any* programmer that could afford \$400 million a year for nationwide leased access. This figure is, indeed, far higher than the major broadcast networks pay their affiliates for nationwide access.

⁵¹ See FNPRM at ¶ 104.

⁵² CME Petition for Reconsideration, MM Docket No. 92-266 (filed June 21, 1993) at 11-12; see also FNPRM at ¶ 104 & n.128.

Furthermore, assuming that preferential rates for not-for-profits would actually result in greater use of leased access by not-for-profits, there has been no showing before the Commission that such a purpose would actually serve the underlying diversity rationale of the leased access rules. Not-for-profit programming may be many things, but it is not necessarily more diverse as a type of programming, nor is it inherently of higher quality, than any other type of leased access programming.

Thus, proposals for preferential rates or set-asides should not be seen as attempts to serve the underlying policies of the leased access rules, but should rather be seen for what they are: an attempt by not-for-profit programmers to get a subsidy for themselves. As such, preferential rates for not-for-profits fly in the face of the Commission's statement that since leased access rates must be "at least sufficient to assure that such use will not adversely affect the operation, financial condition, or market development of the cable system," the Commission does not "believe that Congress intended that cable operators subsidize programmers who seek access to their systems through the provisions of Section 612."⁵³ Although the cost formula and market-based calculations would prevent cable operators from subsidizing for-profit leased access programmers, any rate set below the Commission's proposed maximum leased access rate inherently fails to take into account the opportunity costs lost by the cable operator. Thus, in order to subsidize not-for-profit programmers, the cable operator would be effectively penalized.

⁵³ FNPRM at ¶¶ 26-27 (quoting Communications Act § 612(c)(1), 47 U.S.C. § 532(c)(1)).

Indeed, either the operator would have to subsidize such programmers, or the costs would be passed on to other, for-profit leased access programmers. Nowhere in the statutory language of the leased access provisions or their legislative history has Congress allowed the Commission or cable operators to engage in social engineering by mandating cross-subsidization among leased access programmers.

In response to the Commission's request that parties demonstrate whether current leased access programming is sufficiently diverse and whether preferential treatment would affect that diversity, GSN responds that it is impossible to do so given the current environment of leased access. Very few programmers actually make use of leased access at the present time, and thus it would be extremely difficult to assemble a statistically significant sampling. Even if one could, it bears repeating that one could only show a snapshot of the diversity of programming under the current highest implicit fee formula regime. Should the Commission adopt its proposed cost formula, the picture of diversity in leased access programming may change drastically. Assuming costs come down, the new cost regime may favor greater participation by not-for-profits. GSN expects that it will.

As such, GSN requests that the Commission reject any calls for preferential leased access rates and allow its proposed regime to go forward without additional rules for which no need has been shown and no Congressional directive exists.

B. Separate Set-Aside Requirement

The Commission also has requested comment on whether the Communications Act allows it to consider a separate set-aside requirement for not-for-profit programmers.⁵⁴ GSN believes that such a set-aside, which is not specifically authorized by the leased access provisions of the Communications Act,⁵⁵ is in fact unnecessary.

As the Commission itself has noted, many not-for-profits already have access to cable carriage through PEG requirements.⁵⁶ Additionally, qualified minority-owned and educational programming -- much of which is not-for-profit -- can substitute for up to 33 percent of a cable system's leased access programming under Section 612(i) of the Communications Act.⁵⁷ Given these avenues available for non-profits, it is quite understandable that Congress did not see the need to mandate a set-aside for not-for-profits. Also, GSN's proposal discussed above at Section II.C would prevent a single category from occupying over 50 percent of designated leased access channels, and thus should redound to the benefit of not-for-profits. Finally, the observation above that

⁵⁴ Id. at ¶ 114.

⁵⁵ See Communications Act, § 612, 47 U.S.C. § 532.

⁵⁶ See, e.g., FNPRM ¶¶ 103 and 112. It may be argued that not all not-for-profits can make use of the PEG provisions. However, given the educational content of many not-for-profit channels, qualification should not be difficult for a large number of these programmers.

⁵⁷ 47 U.S.C. § 523(i).

preferential rates for not-for-profits do not necessarily serve the underlying purpose of the leased access rules to promote diversity is equally applicable to set-asides.

VII. DISPUTE RESOLUTION

The Commission has proposed to streamline the dispute resolution process by requiring independent certified public accountants to examine a cable operator's rate calculation prior to any filing of a complaint by a leased access programmer. Although GSN supports this attempt to simplify the process by which disputes over leased access may be resolved, it requests that the Commission modify its proposed rule in three respects.

First, the findings of any accountant chosen by both parties to a dispute should be made final and binding, similar to the terms of an arbitration, on the parties. As such, the parties would essentially stipulate to the facts of the accountant's report in any subsequent proceeding, thereby preventing both parties from challenging the accountant's determination and avoiding wasteful rehashing of rate information.

Second, the accountant's expenses should be paid by the loser, but only if the difference between the accountant's report and the amount charged by the cable operator for leased access shows a differential of greater than 10 percent. Thus, if the accountant determines that the cable operator overcharges by more than 10 percent, the cable operator would pay. If the accountant determines that the cable operator

undercharges by more than 10 percent, the cable programmer would pay. Otherwise, each party would pay one-half of the cost. (GSN believes that, in most cases, the parties would split the cost.) This system would provide an incentive to bring cases against gross overcharging, and a disincentive against bringing frivolous cases.

Third, should the parties be unable to agree on an accountant within five business days of the programmer's request for review, the operator and the programmer should be allowed to designate one accountant each, and these accountants would then designate a neutral third accountant to make the report. The Commission's proposed rule would allow the operator to do so unilaterally.⁵⁸ However, allowing the operator to designate an accountant in default of agreement with the programmer gives the operator no incentive to agree to any accountant suggested by the programmer. Moreover, unilateral designation is particularly unfortunate if a unilaterally chosen accountant's findings are then binding on the programmer. Furthermore, if the programmer is proved to be wrong and is required to pay the accountant's fees, the programmer will be required to pay fees to an accountant the programmer did not choose and may not have wanted. The consequences of allowing unilateral designation of an accountant to resolve disputes are such that the Commission should require the designation of a third accountant as described above, a fair practice consistent with that often used in alternative dispute resolution.

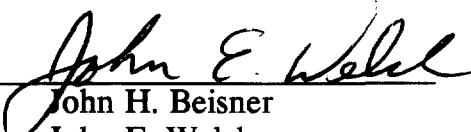
⁵⁸ See FNPRM at ¶ 56.

CONCLUSION

The Commission's cost/market formula and related proposals in the FNPRM are important developments in establishing a favorable climate for the growth of independent cable programming. They will enhance the diversity of programming available and inure to the benefit of cable subscribers. GSN believes that the modifications to the Commission's proposed rules discussed herein clarify and refine the Commission's proposals, and further advance the policies underlying leased access. Accordingly, GSN respectfully requests that the Commission expeditiously adopt its proposals in the FNPRM as modified by the clarifications and refinements advanced by GSN in these comments.

Respectfully submitted,

THE GAME SHOW NETWORK, L.P.

By 
John H. Beisner
John E. Welch
Jeffrey J. Carlisle

O'MELVENY & MYERS
555 13th Street, N.W.
Washington, D.C. 20004-1109
(202) 383-5376

Its Counsel

Dated: May 15, 1996

EXHIBIT A

AFFILIATION OF MAJOR CABLE PROGRAMMING NETWORKS

EXHIBIT A

Table 1 lists the major cable programming networks ranked by distribution at the end of 1984, at the beginning of 1993 and at present. Affiliation is classified as either "independent" or "MSO-owned." The most recent list (April 1996) includes the classification of "broadcaster/retransmission consent" to account for two new major networks that gained the majority of their distribution by accepting channel capacity in lieu of straight cash payments to the broadcast groups which own them. Each of the MSO networks is at least 20% owned by one or more of the top 15 MSOs, all of which presently claim at least one million subscribers. Independent networks marked with an asterisk are either owned in part by one or more smaller MSOs or were owned by an MSO at some point in their history.

A mere glance at the relative sizes of the three lists illustrates the growth in the number of cable program networks as channel capacity expanded dramatically over the 12-year period. Unfortunately, the number of competitive voices in the marketplace, as defined by independently owned networks, has declined considerably, not only in relative terms but even in absolute numbers. As illustrated graphically in Figure 1, nearly 65% of all networks reaching 5 million or more subscribers at the end of 1984 were independently owned, in contrast to only 35% of networks reaching 15 million or more subscribers at the beginning of 1993, and fewer than 25% of networks reaching 17 million or more subscribers at present. While the number of networks listed has risen from 28 in 1984 to 45 in 1996, the number of independently owned networks has actually declined from 18 to 10 over the 12-year period. Of the 10, six have been owned by MSOs of one size or another during most of their history, and the remaining four were launched in the early 1980s and were well established by 1984.

In assessing the state of cable program competition, it is also worth noting that network ownership is concentrated in the hands of the very largest system operators. In fact, the two largest system operators have major equity interests in more than half of the cable networks on the current list. Clearly, significant increases in channel capacity have done nothing to ameliorate the competitive problem, and the need to utilize leased access capacity to engender competition in cable programming is even more critical today than it was when Congress addressed the issue in the 1992 Cable Act.

Table 1
Cable Networks by Size and Affiliation

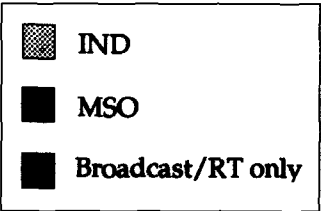
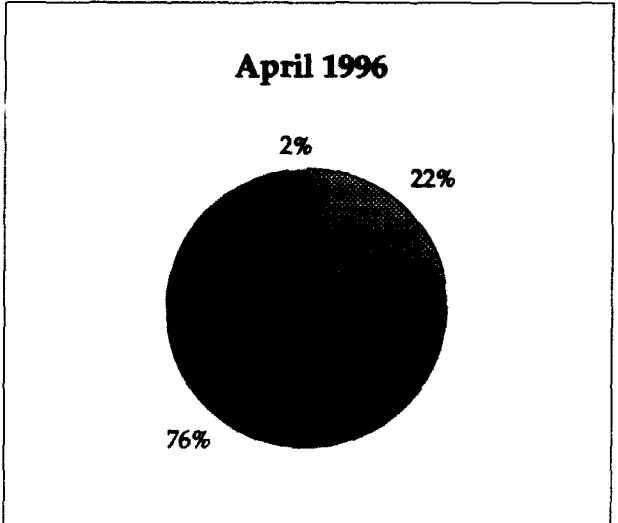
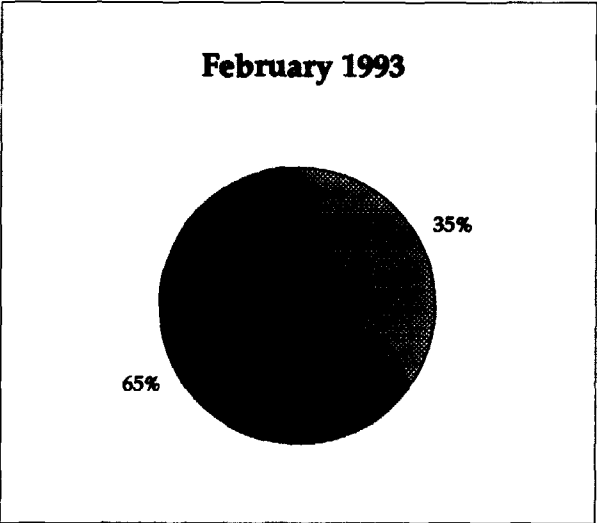
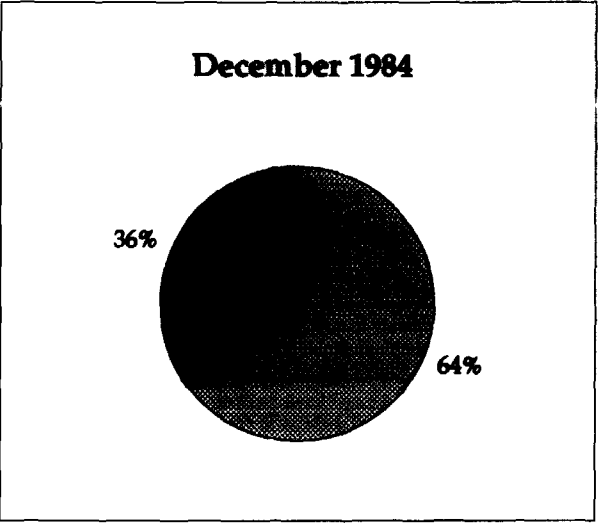
December 1984			February 1993			April 1996		
Cable Network	Subscribers (in millions)	Affiliation	Cable Network	Subscribers (in millions)	Affiliation	Cable Network	Subscribers (in millions)	Affiliation
ESPN	34.0	IND	ESPN	61.4	IND	ESPN	67.4	IND
WTBS Superstation (SSS)	33.1	IND	Cable News Network	61.1	MSO	The Discovery Channel	67.3	MSO
Cable News Network	30.6	IND	USA Network	60.0	IND*	Cable News Network	67.2	MSO
USA Network	28.2	MSO	The Discovery Channel	58.8	MSO	TBS Superstation (SSS)	67.1	MSO
CBN Cable Network	27.2	IND	Nickelodeon	58.7	MSO	USA Network	66.5	MSO
MTV	24.2	MSO	TNT	58.7	MSO	TNT	66.1	MSO
Nickelodeon	23.0	MSO	Lifetime	58.0	MSO	Nickelodeon	65.7	MSO
Lifetime	22.5	MSO	TBS Superstation (SSS)	57.5	MSO	C-SPAN	64.5	MSO
C-SPAN	20.0	MSO	MTV	57.3	MSO	The Nashville Network	64.4	IND*
The Nashville Network	19.5	IND*	C-SPAN	57.2	MSO	The Family Channel	63.9	MSO
Financial News Network	17.5	IND	The Family Channel	57.2	MSO	MTV	63.3	MSO
The Weather Channel	15.7	IND*	The Nashville Network	56.9	IND*	A&E Network	63.2	IND*
WGN Superstation (United Video)	14.2	IND	Arts & Entertainment Network	56.1	IND	Nick at Nite	61.3	MSO
CNN Headline News	13.6	IND	The Weather Channel	53.4	IND*	The Weather Channel	60.9	IND*
PTL The Inspirational Network	13.0	IND	Headline News	51.4	MSO	Headline News	59.3	MSO
Arts & Entertainment	12.0	IND	Nick At Nite	51.3	MSO	Lifetime	59.1	IND*
Satellite Program Network	11.5	IND	CNBC	47.7	IND	CNBC	56.3	IND
Modern Satellite Network	10.3	IND	VH-1	47.1	MSO	American Movie Classics	54.5	MSO
Black Entertainment Television	7.7	MSO	QVC Network	45.0	MSO	VH1	54.2	MSO
Prime of Life	7.5	IND	American Movie Classics	43.0	MSO	QVC Network	53.1	MSO
The Learning Channel	5.2	IND	WGN Superstation (United Video)	38.1	IND	Home Shopping Network	48.1	MSO
National Jewish Television (NJTV)	5.2	IND	Black Entertainment Television	33.9	MSO	The Learning Channel	45.0	MSO
WOR Superstation (Eastern Microwave)	5.0	IND	EWTN	30.0	IND	Black Entertainment Television	43.7	MSO
Home Box Office	NA**	MSO	Prevue Guide	28.0	IND	C-SPAN II	41.5	MSO
Showtime	NA**	MSO	C-SPAN II	27.9	MSO	EWTN	39.5	IND
The Movie Channel	NA**	MSO	Comedy Central	27.0	MSO	WGN Superstation (United Video)	39.1	MSO
Cinemax	NA**	MSO	E! Entertainment Television	21.5	MSO	Comedy Central	38.0	MSO
The Disney Channel	NA**	IND	Home Shopping Network	20.8	IND	E! Entertainment Television	33.3	MSO
			Mind Extension University	20.1	MSO	ESPN2	30.8	B*CAST/RT
			The Learning Channel	18.8	MSO	Country Music Television	30.1	IND*
			Country Music Television	18.1	IND*	Mind Extension University	27.0	MSO
			The Travel Channel	17.5	IND*	The Sci-Fi Channel	26.8	MSO
			Home Box Office	NA**	MSO	The Cartoon Network	25.6	MSO
			The Disney Channel	NA**	IND	Faith & Values Channel	25.1	MSO
			Showtime	NA**	MSO	FX	24.1	B*CAST/RT & MSO
			Cinemax	NA**	MSO	Courtroom Television Network	23.6	MSO
			The Movie Channel	NA**	MSO	Bravo	22.7	MSO
						The Travel Channel	20.1	IND*
						Home Box Office	NA**	MSO
						The Disney Channel	NA**	IND
						Showtime	NA**	MSO
						Cinemax	NA**	MSO
						The Movie Channel	NA**	MSO
						Encore	NA**	MSO
						Request TV	NA**	MSO
						Viewer's Choice	NA**	MSO

*Owned in part by one or more smaller MSOs or were previously owned by an MSO.

**Data on the number of basic subscribers to whom pay services are offered - the accurate reflection of channel utilization - is not published; company information and analysis of industry statistics give us confidence that the pay and pay-per-view networks listed exceeded the basic distribution cut-offs for the respective years (i.e., 5 million for 1984, 15 million for 1993 and 17 million for 1996).

Source: Subscriber counts from *CableVision*

Figure 1
Cable Network Ownership Trend



CERTIFICATE OF SERVICE

I, Jeffrey J. Carlisle, hereby certify that a copy of the foregoing document was served on May 15, 1996, either by hand delivery or by First Class postage-prepaid mail, as indicated, on the following parties:

By First Class Mail:

Marty Adamshick, Vice President
Visual Media Productions
P.O. Box 25004
St. Croix
U.S. Virgin Islands 00824

Sue D. Blumenfeld, Esq.
Willkie Farr & Gallagher
Counsel for QVC, Inc.
Three Lafayette Centre
1155 21st Street, N.W.
6th Floor
Washington, D.C. 20036-3384

Eric E. Breisach, Esq.
Howard & Howard
Counsel for the Small Cable Business Association
107 W. Michigan Avenue
Suite 400
Kalamazoo, Michigan 49007-3956

Daniel L. Brenner, Esq.
National Cable Television
Association
1724 Massachusetts Ave., N.W.
Washington, D.C. 20036-1969

Carl M. Burnett
President and CEO
Prime Radiant Productions
RWD Building, Suite 500
10480 Little Patuxent Parkway
Columbia, MD 21044-3559

Benji Carle, GM
BCB Broadcasting, Inc.
P.O. Box 1316
Florence, AL 35631-1316

William E. Cook, Esq.
Arnold & Porter
Counsel for the National Association of
Telecommunications Officers and Advisors
Thurman Arnold Building
555 12th Street, N.W.
Washington, D.C. 20004-1202

Philip K. DeSano, President
WRIW-LP/Viking Communications, Inc.
Ten Abbott Park
Providence, RI 02903

Aaron I. Fleischman, Esq.
Fleischman and Walsh, L.L.P.
Counsel for Time Warner Cable
1400 16th Street, N.W.
Washington, D.C. 20036

Brenda L. Fox, Esq.
Dow, Lohnes & Albertson
Counsel for the Home Shopping Network
1255 23rd Street, N.W.
Suite 500
Washington, D.C. 20037-1194

Paul Glist, Esq.
Cole, Raywid & Braverman
Counsel for Continental Cablevision
1919 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Michael E. Glover, Esq.
Bell Atlantic
1320 N. Courthouse Road
Arlington, VA 22201

Mario E. Goderich
Cable Television Coordinator
Consumer Services Department
Metropolitan Dade County
140 West Flagler Street
Room 901
Miami, FL 33130

Michael H. Hammer, Esq.
Willkie Farr & Gallagher
Counsel for Tele-Communications, Inc.
Three Lafayette Centre
1155 21st Street, NW
6th Floor
Washington, D.C. 20036-3384

Robert L. Hoegle, Esq.
Carter, Ledyard & Milburn
Counsel for Liberty Media Corp.
1350 I Street, N.W.
Suite 870
Washington, D.C. 20005

Art Parrish, President
Sunbelt Video, Inc.
70 Baybridge
Gulf Breeze, FL 32561

Gail L. Polivy, Esq.
GTE Service Corporation
1850 M Street, N.W.
12th Floor
Washington, D.C. 20036

Robert F. Posadas, Chairman/CEO
TV-61 San Diego, Inc.
5745 Kearny Villa Rd., Suite K
San Diego, CA 92123

William R. Richardson
Wilmer, Cutler & Pickering
Counsel for Valuevision International
2445 M Street, N.W.
Washington, D.C. 20037-1420

Peter D. Ross, Esq.
Wiley, Rein & Fielding
Counsel for Viacom International, Inc.
1776 K Street, N.W.
Washington, D.C. 20006-2304

Michael S. Schooler, Esq.
Dow, Lohnes & Albertson
Counsel for Comcast Cable Communications
and for Cox Communications, Inc.
1255 23rd Street, N.W.
Suite 500
Washington, D.C. 20037-1194

Bruce D. Sokler, Esq.
Mintz, Levin, Cohn
Counsel for Turner Broadcasting System
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, D.C. 20004-2608

Vernon Watson
Owner, WBOP TV-12
3101 North "R" Street
Pensacola, Florida 32505

Christopher P. Witteman
Law Offices of Christopher P. Witteman
Counsel for Mark Kliem
The Monadnock Building
685 Market Street, Suite 390
San Francisco, CA 94105-4212

Roger Wollenberg, Esq.
Wilmer, Cutler & Pickering
Counsel for The Times Mirror Company
2445 M Street, N.W.
Washington, D.C. 20037-1420

Louis A. Zanoni, President
WBZN TV-25
77 Shady Lane
Trenton, NJ 08619

By Hand Delivery:

Julia Buchanan, Esq.
Attorney, Policy and Rules Division
Cable Services Bureau
Federal Communications Commission
2033 M Street, N.W.
Room 918
Washington, D.C. 20554

Lynn Crakes, Esq.
Attorney, Policy and Rules Division
Cable Services Bureau
Federal Communications Commission
2033 M Street, N.W.
Room 918
Washington, D.C. 20554